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21  
22 UNITED STATES DISTRICT COURT  
23 EASTERN DISTRICT OF WASHINGTON  
24 AT RICHLAND  
25

26 EQUAL EMPLOYMENT  
27 OPPORTUNITY COMMISSION,

28 Plaintiff,

29 v.

30 FRED MEYER STORES, INC.  
31 Defendant.

CIVIL ACTION NO. 4:24-cv-5085

**COMPLAINT**

JURY TRIAL DEMAND

## NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex (female) and to provide appropriate relief to Charging Party Melissa Lozano (“Lozano”) and a class of similarly aggrieved female employees who were adversely affected by such practices. The Equal Employment Opportunity Commission (“Commission” or “EEOC”) alleges that Defendant Fred Meyer Stores, Inc. (“Defendant”) subjected Lozano and a class of similarly aggrieved female employees to unlawful harassment and a hostile work environment because of sex (female). Plaintiff seeks injunctive relief and monetary relief for Lozano and a class of similarly aggrieved female employees, including pecuniary damages and nonpecuniary compensatory damages, punitive damages, and prejudgment interest.

## JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) (“Title VII”), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

1           2.     The employment practices alleged to be unlawful were committed  
2 within the jurisdiction of the United States District Court for the Eastern District of  
3 Washington.

4  
5                               PARTIES

6           3.     Plaintiff EEOC is the agency of the United States of America charged  
7 with the administration, interpretation, and enforcement of Title VII, and is  
8 expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII,  
9 42 U.S.C. §§ 2000e-5(f)(1) and (f)(3), and Section 102 of the Civil Rights Act of  
10 1991, 42 U.S.C. § 1981a.

11  
12           4.     At all relevant times, Defendant has been a corporation continuously  
13 doing business in the State of Washington and continuously employing at least  
14 fifteen (15) employees.

15  
16           5.     At all relevant times, Defendant has continuously been an employer  
17 engaged in an industry affecting commerce within the meaning of Sections 701(b),  
18 (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

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20                               ADMINISTRATIVE PROCEDURES

21  
22           6.     More than thirty (30) days prior to the institution of this lawsuit,  
23 Charging Party Melissa Lozano filed EEOC Charge 551-2022-00872 alleging  
24 violations of Title VII by Defendant.  
25

1           7.     The Commission issued a Letter of Determination on August 17,  
2     2023, and subsequently, an Amended Letter of Determination on August 24, 2023,  
3     to Defendant finding reasonable cause to believe Title VII was violated and  
4     inviting Defendant to join with the Commission in informal methods of  
5     conciliation to endeavor to eliminate the unlawful employment practices and to  
6     provide appropriate relief for the Charging Party and a class of similarly aggrieved  
7     female employees.  
8

9  
10           8.     Through multiple communications, the Commission provided  
11     Defendant opportunities to remedy the discriminatory practices described in the  
12     Amended Letter of Determination.  
13

14           9.     The Commission was unable to secure from Defendant a conciliation  
15     agreement acceptable to the Commission.  
16

17           10.    On September 28, 2023, the Commission issued a Notice of Failure of  
18     Conciliation as to the above-referenced charge advising that the Commission was  
19     unable to secure from Defendant a conciliation agreement acceptable to the  
20     Commission.  
21

22           11.    All conditions precedent to the institution of this lawsuit have been  
23     fulfilled.  
24  
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STATEMENT OF CLAIMS

12. An Apparel Manager and Human Resource Representative at Defendant's Richland, Washington location met on May 30, 2014, with a male Home Department Clerk regarding his inappropriate comment to a female employee. The meeting was memorialized in a document "Regarding: Associate concern about harassment/attention that is unwanted" and placed in the male Clerk's personnel records.

13. Since at least approximately 2017, Defendant has engaged in unlawful employment practices because of sex in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) at its location in Richland, Washington, by subjecting Lozano and other similarly aggrieved female employees to a hostile work environment based on their sex (female).

14. The male Home Department Clerk referred to in Paragraph 12 subjected Lozano and other similarly aggrieved female employees at Defendant's Richland location to repeated verbal and physical sexual conduct since at least 2017, including leering at and touching them, making remarks about their bodies and appearance, propositioning them, following them outside of the workplace, and forcing them to interact with him despite repeatedly being told by female employees that his conduct was not wanted.

1           15. Defendant was aware of the male Clerk's sexual remarks,  
2 inappropriate touching and propositioning of female employees.

3           16. Starting in 2017 and continuing through 2020, the male Clerk  
4 subjected a female Apparel Manager to inappropriate conduct by asking her to  
5 meet him outside of work, asking her to approve register overrides even though she  
6 worked in a different department to force her to interact with him, and wolf  
7 whistling at her. She refused his advances and hid from him in the stock room.  
8  
9

10           17. The Apparel Manager reported the male Clerk's conduct to the Home  
11 Department Manager and Human Resources in or about 2020.  
12

13           18. The Home Department Manager and Human Resources failed to  
14 adequately respond to the Apparel Manager's complaint.  
15

16           19. Thereafter the male Clerk continued to seek out the Apparel Manager  
17 for assistance with overrides.

18           20. Starting in or about 2017 and continuing through 2021, the male  
19 Clerk made inappropriate sexual comments to a 17-year-old female Apparel  
20 Associate about her body and appearance, invited her to his cabin, followed her  
21 home in his car, waited for her after work, and approached her during work hours.  
22  
23  
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1           21. The female Apparel Associate reported to Apparel Department  
2 managers that the male Clerk made comments about her body and how she looked,  
3 and that he invited her to his cabin.  
4

5           22. The managers did nothing to stop the male Clerk's conduct after  
6 receiving the report from the Apparel Associate.  
7

8           23. In or about March 2021, the male Clerk stared at a female Hardline  
9 Clerk, remarked to her that her butt looked good, asked if she was losing weight,  
10 and pressed his hand on her apron near her genitals.  
11

12           24. The Hardline Clerk complained in writing to managers that the male  
13 Clerk stared at her, told her that her butt was looking good, asked if she was losing  
14 weight, and pressed his hand on her apron near her genitals.  
15

16           25. The male Clerk admitted making the comments about the female  
17 Hardline Clerk's body. Defendant suspended the male Clerk for a few days and  
18 gave him a final warning, instructing him to be professional and appropriate.  
19

20           26. Charging Party Melissa Lozano was an Accessories Lead /back up  
21 person in charge (PIC) in the Apparel Department. Starting in or about May 2021  
22 the male Clerk repeatedly called Lozano for overrides even though she worked in a  
23 different department.  
24  
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1           27. In or about June 2021, the male Clerk wolf whistled at Lozano, called  
2 out “hello beautiful”, followed her around the store, stared at her, and took his  
3 breaks when she did. He also parked his car near hers in Defendant’s parking lot  
4 and sat on the hood of his car watching her while she took breaks in her car trying  
5 to avoid him. The male Clerk also waited for Lozano outside the store after  
6 closing.  
7

8           28. In or about June 2021, Lozano told the male Clerk that she did not  
9 appreciate his behavior and not to call her “beautiful.” She also tried to avoid him,  
10 and asked a coworker to escort her to her car at night after closing.  
11

12           29. Lozano reported to the Assistant Store Manager and Apparel Manager  
13 by email dated June 24, 2021, that the male Clerk said “hello beautiful” to her. She  
14 also reported that she was uncomfortable helping the male Clerk.  
15

16           30. In or about June 2021, the male Clerk followed Lozano in his car as  
17 she drove out of Defendant’s parking lot and attempted to get her attention on the  
18 road.  
19

20           31. Lozano reported to the Assistant Store Manager by email dated June  
21 27, 2021, that the male Clerk followed her in his car when she drove out of the  
22 Defendant’s parking, and called her excessively for overrides when other PICs in  
23 his work area were available.  
24  
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1           32. In or about July 2021, the Apparel Manager observed the male Clerk  
2 waiting for Lozano to clock out for the night and attempting to speak to her. The  
3 Apparel Manager informed the Assistant Store Manager and Store Manager by  
4 email dated July 17, 2021, that she witnessed the male Clerk hovering around  
5 Lozano, that Lozano was having problems with unwanted attention from him, and  
6 that he was consistently parking within close proximity of Lozano's car.  
7

8           33. Lozano complained to the Assistant Store Manager by email dated  
9 July 17, 2021, that the male Clerk parked his car close to Lozano's car in the  
10 Richland parking lot, consistently attempted to speak with Lozano even though she  
11 tried to avoid him, and waited around for her to clock out for the night so he could  
12 talk to her.  
13

14           34. The Assistant Store Manager and Store Manager instructed the male  
15 Clerk not to ask Lozano for any overrides but did not address any other issues with  
16 him.  
17

18           35. In or about July 2021, the male Clerk waited for Lozano in  
19 Defendant's parking lot and followed her in his car when she drove out of the  
20 parking lot. Lozano made a hurried turn to prevent him from following her home.  
21 In or about August 2021, the male Clerk asked Lozano if he caught up with her.  
22 Lozano yelled at the male Clerk to leave her alone.  
23  
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1           36. Lozano complained to the Assistant Store Manager and Store  
2 Manager by email dated August 6, 2021, that the male Clerk followed her in his  
3 car after work for the second time, and that she needed to have someone walk her  
4 to her car after work and drive home by a different route.  
5

6           37. The Store Manager and Assistant Store Manager met with the male  
7 Clerk, who denied that he had followed Lozano, and told him not to have further  
8 contact with her.  
9

10          38. Lozano complained to Defendant's managers by email dated October  
11 9, 2021, that the male Clerk had ignored their no-contact instructions because he  
12 walked near her work area and tried to speak with her.  
13

14          39. Lozano also complained on October 11, 2021, by email to the Vice  
15 President of Operations and the Senior Labor Relations Manager of Kroger, of  
16 which Defendant is a subsidiary, describing the months of inappropriate conduct  
17 from the male Clerk. Lozano received no response.  
18

19          40. On or about October 23, 2021, Defendant assigned Lozano to work  
20 near the Home Department entrance, which was close to the male Clerk's  
21 workstation.  
22  
23  
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1           41. Lozano objected to the assignment, and then went home early due to  
2 the distress she experienced because she was afraid of working so close to the male  
3 Clerk.

4           42. Lozano also told the Lead Assistant Store Leader on or about October  
5 26, 2021, about the male Clerk's inappropriate conduct, who then offered to  
6 transfer her, saying Defendant could not control the male Clerk's behavior. The  
7 Assistant Store Manager and Lead Assistant Store Leader reminded the male Clerk  
8 to leave Lozano alone.  
9

10           43. In or about November 2021, the male Clerk continued to seek out  
11 Lozano in her work area to interact with her, which caused her to hide in a back  
12 room of the store to avoid him.  
13

14           44. The male Clerk also stared at another female Apparel Clerk, followed  
15 her, and made inappropriate sexual comments about her body in or about August  
16 2021 until she resigned in or about December 2021.  
17

18           45. The female Apparel Clerk complained to the Assistant Store Manager  
19 that the male Clerk made inappropriate sexual comments about how certain clothes  
20 would look on her body, stared at her, and told her she looked good.  
21

22           46. The Assistant Store Manager did not conduct an investigation.  
23  
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1           47. In the fall of 2021, the male Clerk also made comments to a female  
2 Closing Manager about her appearance, leered at her, and followed her to the  
3 parking lot at night. In December 2021, after everyone else had clocked out for the  
4 night, the male Clerk showed the female Closing Manager an ad for a revealing  
5 mini dress and told her how good she would look in that dress.  
6

7           48. The female Closing Manager emailed her managers on December 9,  
8 2021, describing that the male Clerk showed her a picture of a revealing dress and  
9 told her she would look good in it. Defendant then terminated the male Clerk.  
10

11           49. As described in Paragraphs 13-46, Defendant had constructive and  
12 actual notice of offensive and unwelcome sexual conduct by the male Clerk  
13 towards Lozano and similarly aggrieved female employees since at least 2017 but  
14 failed to take prompt or effective corrective action to stop his harassment.  
15

16           50. The effect of Defendant's practices complained of in Paragraphs 13–  
17 49 above has been to deprive Lozano and other similarly aggrieved female  
18 employees of equal employment opportunities because of their sex.  
19

20           51. The unlawful employment practices complained of in Paragraphs 13–  
21 49 above were intentional.  
22  
23  
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1           52. The unlawful employment practices complained of in Paragraphs 13–  
2 49 above were done with malice or with reckless indifference to the federally  
3 protected rights of Lozano and other similarly aggrieved female employees.  
4

5                           PRAYER FOR RELIEF

6           Wherefore, the Commission respectfully requests that this Court:

7           A. Grant a permanent injunction enjoining Defendant, its officers,  
8 successors, agents, assigns, and all persons in active concert or participation with  
9 it, from engaging in any employment practices which discriminate based on sex,  
10 female, including sexual harassment.  
11

12           B. Order Defendant to institute and carry out policies, practices, and  
13 programs which provide equal employment opportunities for all employees, and  
14 which eradicate the effects of its past and present unlawful employment practices.  
15

16           C. Order Defendant to make Lozano and those similarly aggrieved  
17 employees whole by providing compensation for past and future pecuniary losses  
18 resulting from the unlawful employment practices described in Paragraphs 13-49  
19 above, as appropriate, including past and future out-of-pocket expenses, in  
20 amounts to be determined at trial.  
21

22           D. Order Defendant to make Lozano and similarly aggrieved female  
23 employees whole by providing compensation for past and future nonpecuniary  
24  
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1 losses resulting from the unlawful practices complained of in Paragraphs 13-49  
2 above, including without limitation compensation for emotional pain, suffering,  
3 and loss of enjoyment of life, in amounts to be determined at trial.  
4

5 E. Order Defendant to pay Lozano and those similarly aggrieved female  
6 employees punitive damages for its malicious and reckless conduct described in  
7 Paragraphs 13-49 above, in amounts to be determined at trial.  
8

9 F. Grant such further relief as the Court deems necessary and proper in  
10 the public interest.

11 G. Award the Commission its costs of this action.  
12

13 JURY TRIAL DEMAND

14 The Commission requests a jury trial on all questions of fact raised by its  
15 Complaint.  
16

17  
18 DATED this 16th day of July 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all counsel of record.

DATED this 16th day of July, 2024.

/s/ Jimmy Yen

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